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Acting Chairwoman Mignon Clyburn Commissioner Jessica Rosenworcel Commissioner Ajit Pai

Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

## **Ex Parte Presentation**

WT Docket No. 12-269, <u>Policies Regarding Mobile Spectrum Holdings</u>; GN Docket No. 12-268, <u>Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions</u>

Dear Acting Chairwoman and Commissioners:

No spectrum auction has as much potential to benefit consumers and strengthen competition for wireless broadband services as the upcoming auction of the 600 MHz broadcast spectrum. For this reason, the undersigned companies, associations and public interest organizations are writing to voice our support for measures that promote sustainable competition in mobile wireless services, including a thorough and comprehensive review and update of the Federal Communications Commission ("the Commission") spectrum holdings rules in preparation for this auction.<sup>1</sup>

The Department of Justice's ("DOJ") *ex parte* submission last month to the Commission contains important recommendations aimed at preserving mobile broadband competition as the Commission prepares to auction 600 MHz spectrum.<sup>2</sup> As competition experts with the responsibility to enforce antitrust laws, the DOJ deserves great deference. We urge the Commission to adopt rules that support those recommendations and that will enable broad participation in the auction, thereby promoting competition and increasing prospective auction revenues.

In its submission, the DOJ noted that allowing the two largest wireless carriers to acquire all or nearly all available 600 MHz spectrum would further concentrate their holdings of scarce low-frequency spectrum resources, which, in turn, would stifle

<sup>&</sup>lt;sup>1</sup> Contra Letter from Wayne Watts, Sr. Executive Vice President and General Counsel, AT&T Inc., to Chairman Genachowski, et al., WT Docket No. 12-269 (filed April 24, 2013) ("AT&T Letter"), <a href="http://apps.fcc.gov/ecfs/document/view?id=7022295704">http://apps.fcc.gov/ecfs/document/view?id=7022295704</a>.

<sup>&</sup>lt;sup>2</sup> See Ex Parte Submission of the United States Department of Justice, WT Docket No. 12-269 (filed April 11, 2013) ("DOJ Ex Parte Submission"), http://apps.fcc.gov/ecfs/document/view?id=7022269624.

broadband competition, stymie broadband innovation, and reduce incentives for broadband deployment. In response, AT&T attempts to belittle the DOJ's realistic appraisal of the broadband-friendly performance characteristics of 600 MHz spectrum. AT&T also disagrees that excessive concentration of critical low-frequency licenses in the hands of the industry's two dominant wireless carriers would undermine robust, long-term wireless competition. Aside from AT&T and its surrogates, however, few seriously dispute that access to sufficient low-band spectrum is essential for all carriers to maintain economically competitive wireless broadband networks.

AT&T also incorrectly claims that its competitors want to exclude AT&T and Verizon Wireless from the 600 MHz auction. Not one of AT&T's competitors has ever taken this position before the FCC or Congress. Reasonable spectrum aggregation rules would not preclude AT&T and Verizon from bidding for 600 MHz licenses. A robust and competitive auction structure that promotes broad bidder participation is likely to enhance revenue for the U.S. Treasury while simultaneously furthering Congress' pro-competitive goals for the wireless industry and for American consumers, as expressed in the legislation authorizing the 600 MHz auction.

For example, Congress has wisely charged the Commission with "avoid[ing] excessive concentration of licenses" and distributing licenses to "a wide variety of applicants." Moreover, the Middle Class Tax Relief and Job Creation Act of 2012 solidified the Commission's longstanding role in promoting a competitive marketplace through spectrum auctions by adopting and enforcing rules "concerning spectrum aggregation that promote competition." Spectrum aggregation limits contribute both to meeting these goals *and* increasing auction revenue by attracting a wider base of potential bidders – bidders that might otherwise be deterred from participating. Just as important, pro-competitive spectrum holdings limits will increase downstream competition, investment and innovation in the wireless marketplace.

The nation's two largest wireless carriers already hold 78 percent of the low-frequency broadband-capable spectrum and account for more than 80 percent of wireless industry revenues. These two carriers have every incentive to employ their extensive market power to foreclose smaller competitors from participating in the 600 MHz auction, which would likely lead to a wireless duopoly in the United States, similar to their dominance in the wireline market, and thus compromising the growth of the broadband economy.

For these reasons, the undersigned parties urge the Commission to support competition and protect consumers from this undesirable future by adopting

<sup>&</sup>lt;sup>3</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>&</sup>lt;sup>4</sup> See id. § 309(j)(17)(B).

spectrum holdings limits on spectrum below 1 GHz and applying such limits in its 600 MHz auction structure.

The Commission should work aggressively to fulfill the agency's statutory responsibilities of protecting consumers, promoting competition, and encouraging further deployment of competitive wireless broadband services to the American public.

Respectfully submitted,

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